

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

FURY MOTORS, INC.¹

Employer

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

Petitioner

Case 18-RC-17586

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of full-time and regular part-time lube technicians employed by the Employer at its facility located at 1000 South Concord Street, South St. Paul, Minnesota; excluding parts department personnel, new and used vehicle sales employees, body shop personnel, motorcycle technicians, service technicians, CAP students, dispatchers, driver/runners, porters, office clerical employees, managerial employees, confidential employees and professional employees, guards and supervisors as defined in the Act, and all other employees.

The Employer did not appear at the hearing. Therefore, the Employer does not contest the appropriateness of the unit sought by Petitioner. Moreover, according to the record in this matter, at no time during informal discussions held before the hearing

¹ The Employer's name appears as amended at the hearing.

between the Employer's representative and the Board agent assigned to this case did the Employer contend that the unit sought by Petitioner is inappropriate.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

Because the Employer did not appear at the hearing, the record does not contain specific commerce information with regard to the Employer. However, I conclude that it is appropriate to assert jurisdiction in this case, in spite of the lack of specific evidence regarding the Employer's dollar volume of business.

The Employer sells and services new and used automobiles at its South St. Paul, Minnesota facility. Therefore, because the Employer is a retail enterprise, the Employer falls within the Board's statutory jurisdiction if it does a gross annual volume of business of at least \$500,000, and if it annually purchases goods and services from outside the State of Minnesota. *Swift Cleaners*, 191 NLRB 597 (1971).

I take judicial notice of the fact that Petitioner in this matter filed a petition in Case 18-RC-17283, seeking to represent the Employer's service technicians. On June 18, 2004, then-Regional Director Sharp approved a Stipulated Election Agreement for an election to be held on July 7, 2004. Thereafter, on July 14, 2004, Petitioner was certified by this office as the collective-bargaining representative of the Employer's service technicians. I note that, as part of the Stipulated Election Agreement in Case 18-RC-17283, the Employer stipulated that it met the Board's jurisdictional standards.

In addition, there is testimony in the record by Petitioner's business representative regarding his knowledge of the Employer's operation. The business representative testified that he is at the Employer's facility approximately every six weeks, presumably because Petitioner already represents the Employer's service technicians. The business representative testified that there are between 100 and 150 new cars for sale at the Employer's facility at any given time. These new cars are Chrysler, Dodge and Jeep products, valued at between \$13,000 and \$30,000 each. The business representative further testified that none of these automobiles is manufactured in the State of Minnesota, because no automobile plants exist in the State for Chrysler, Dodge or Jeep products. Thus, all of the new cars sold by the Employer are manufactured outside the State of Minnesota.

In view of the foregoing, I conclude that the Employer is currently in the same business as it was in 2004 when it stipulated to the Board's jurisdiction. I further conclude that the Employer falls within the Board's jurisdictional standard for retail enterprises.

The following employees of Fury Motors, Inc. constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time lube technicians employed by the Employer at its facility located at 1000 South Concord Street, South St. Paul, Minnesota; excluding parts department personnel, new and used vehicle sales employees, body shop personnel, motorcycle technicians, service technicians, CAP students, dispatchers, driver/runners, porters, office clerical employees, managerial employees, confidential employees and professional employees, guards and supervisors as defined by the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in

an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **International Association of Machinists and Aerospace Workers, AFL-CIO.**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by 5:00 p.m. (EDT) on July 7, 2008.** The request may be filed through E-Gov on the Board's website, www.nlr.gov,³ but may not be filed by facsimile.

² To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401-2221, on or before close of business **June 27, 2008**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

³ To file a request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.

Signed at Minneapolis, Minnesota, this 20th day of June, 2008.

/s/ Robert W. Chester

Robert W. Chester, Regional Director
National Labor Relations Board – Region 18
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Minneapolis, MN 55401-2221